

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 03-0085
Sales and Use Tax
For the Years 1999-2001

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Sales and Use Tax-Imposition

Authority: IC 6-2.5-2-1, IC 6-8.1-5-1 (b), IC 6-2.5-4-1(b).

The taxpayer protests the assessment of sales tax on certain transactions.

STATEMENT OF FACTS

The taxpayer is a retailer of jewelry, wristwatches, wall and desk clocks, and batteries for watches and clocks. The taxpayer also provides services such as restringing pearls and installing batteries. The Indiana Department of Revenue, hereinafter referred to as the "department," conducted an audit for the years 1999-2001 by sampling the taxpayer's sales invoices for nine months. The taxpayer protested the imposition of sales tax on certain transactions during the sample months. A hearing was held. This Letter of Findings results.

I. Sales and Use Tax-Imposition

DISCUSSION

The taxpayer protests the assessment of sales tax on four particular transactions during the sample months. Two of the transactions involved the purchase of jewelry that was mailed to the purchaser's out-of-state address. The other two were transactions where the purchased items were returned to the taxpayer, resulting in no sale.

All tax assessments are presumed to be accurate and the taxpayer bears the burden of proving that any assessment is incorrect. IC 6-8.1-5-1 (b).

Retail transactions made in Indiana are subject to sales tax. IC 6-2.5-2-1. A retail transaction is defined generally as the acquisition and subsequent transfer of ownership of tangible personal property for consideration in the retail merchant's normal course of business. IC 6-2.5-4-1(b).

The taxpayer sold a strand of pearls and a diamond with mounting. Each of these transactions took place in the taxpayer's store. The purchased jewelry was later mailed to the purchasers' out-of-state addresses. The sales were actually completed in Indiana. Subsequent delivery to an

out-of-state location does not put the sale into interstate commerce. Therefore sales tax was properly imposed.

The taxpayer provided substantial evidence that rubies and a ring were returned by the purchasers to the taxpayer's store. After the return of the items, the taxpayer refunded the total price including Indiana sales tax to the purchasers. Since there were no sales, there was no sales tax due to the state. The taxpayer sustained its burden of proof that these transactions should be removed from the audit.

FINDING

The taxpayer's protest is sustained as to the two transactions where the purchased items were returned. The taxpayer's protest as to the two transactions where the purchased items were subsequently mailed out of state are denied.

KMA/JMM/MR--041908